

§ 4279.144

to protect the business. The cost of insurance and its effect on the applicant's working capital must be considered as well as the amount of existing insurance which could be assigned without requiring additional expense.

(c) *Worker compensation.* Worker compensation insurance is required in accordance with State law.

(d) *Flood.* National flood insurance is required in accordance with 7 CFR, part 1806, subpart B (FmHA Instruction 426.2, available in any field office or the National Office).

(e) *Other.* Public liability, business interruption, malpractice, and other insurance appropriate to the borrower's particular business and circumstances will be considered and required when needed to protect the interests of the borrower.

§ 4279.144 Appraisals.

Lenders will be responsible for ensuring that appraisal values adequately reflect the actual value of the collateral. All real property appraisals associated with Agency guaranteed loanmaking and servicing transactions will meet the requirements contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 and the appropriate guidelines contained in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP). In accordance with USPAP, the Agency will require documentation that the appraiser has the necessary experience and competency to appraise the property in question. All appraisals will include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral. For additional guidance and information concerning the completion of real property appraisals, refer to "Standard Practices for Environmental Site Assessments: Transaction Screen Questionnaire" and "Phase I Environmental Site Assessment," both published by the American Society of Testing and Materials. Chatels will be evaluated in accordance with normal banking practices and generally accepted methods of determining value.

[69 FR 64831, Nov. 9, 2004]

7 CFR Ch. XLII (1–12 Edition)

§§ 4279.145–4279.148 [Reserved]

§ 4279.149 Personal and corporate guarantee.

(a) Unconditional personal and corporate guarantees are part of the collateral for the loan, but are not considered in determining whether a loan is adequately secured for loanmaking purposes. Agency approved personal and corporate guarantees for the full term of the loan and at least equal to the guarantor's percent interest in the borrower, times the loan amount are required from those owning at least a 20 percent interest in the borrower, unless the lender documents to the Agency's satisfaction that collateral, equity, cashflow, and profitability indicate an above-average ability to repay the loan. The guarantors will execute an Agency approved unconditional guarantee form. When warranted by an Agency assessment of potential financial risk, Agency approved guarantees may also be required of parent, subsidiaries, or affiliated companies (owning less than a 20 percent interest in the borrower) and require security for any guarantee provided under this section.

(b) Exceptions to the requirement for personal guarantees must be requested by the lender and concurred by the Agency approval official on a case-by-case basis. The lender must document that collateral, equity, cashflow, and profitability indicate an above-average ability to repay the loan.

[71 FR 67033, Nov. 20, 2006; 72 FR 27241, May 15, 2007]

§ 4279.150 Feasibility studies.

A feasibility study by a qualified independent consultant may be required by the Agency for start-up businesses or existing businesses when the project will significantly affect the borrower's operations. An acceptable feasibility study should include, but not be limited to, economic, market, technical, financial, and management feasibility.

§§ 4279.151–4279.154 [Reserved]

§ 4279.155 Loan priorities.

Applications and preapplications received by the Agency will be considered in the order received; however, for

the purpose of assigning priorities as described in paragraph (b) of this section, the Agency will compare an application to other pending applications.

(a) When applications on hand otherwise have equal priority, applications for loans from qualified veterans will have preference.

(b) Priorities will be assigned by the Agency to eligible applications on the basis of a point system as contained in this section. The application and supporting information will be used to determine an eligible proposed project's priority for available guarantee authority. All lenders, including CLP lenders, will consider Agency priorities when choosing projects for guarantee. The lender will provide necessary information related to determining the score, as requested.

(1) *Population priority.* Projects located in an unincorporated area or in a city with under 25,000 population (10 points).

(2) *Community priority.* The priority score for community will be the total score for the following categories:

(i) Located in an eligible area of long term population decline and job deterioration based on reliable statistical data (5 points).

(ii) Located in a rural community that has remained persistently poor over the last 60 years (5 points).

(iii) Located in a rural community that is experiencing trauma as a result of natural disaster or experiencing fundamental structural changes in its economic base (5 points).

(iv) Located in a city or county with an unemployment rate 125 percent of the statewide rate or greater (5 points).

(3) *Empowerment Zone/Enterprise Community (EZ/EC).* (i) Located in an EZ/EC designated area (10 points).

(ii) Located in a designated Champion Community (5 points). A Champion Community is a community which developed a strategic plan to apply for an EZ/EC designation, but not selected as a designated EZ/EC Community.

(4) *Loan features.* The priority score for loan features will be the total score for the following categories:

(i) Lender will price the loan at the Wall Street Journal published Prime Rate plus 1.5 percent or less (5 points).

(ii) Lender will price the loan at the Wall Street Journal published Prime Rate plus 1 percent or less (5 points).

(iii) The Agency guaranteed loan is less than 50 percent of project cost (5 points).

(iv) Percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points).

(5) *High impact business investment priorities.* The priority score for high impact business investment will be the total score for the following three categories:

(i) *Industry.* The priority score for industry will be the total score for the following, except that the total score for industry cannot exceed 10 points.

(A) Industry that has 20 percent or more of its sales in international markets (5 points).

(B) Industry that is not already present in the community (5 points).

(ii) *Business.* The priority score for business will be the total score for the following:

(A) Business that offers high value, specialized products and services that command high prices (2 points).

(B) Business that provides an additional market for existing local business (3 points).

(C) Business that is locally owned and managed (3 points).

(D) Business that will produce a natural resource value-added product (2 points).

(iii) *Occupations.* The priority score for occupations will be the total score for the following, except that the total score for job quality cannot exceed 10 points:

(A) Business that creates jobs with an average wage exceeding 125 percent of the Federal minimum wage (5 points).

(B) Business that creates jobs with an average wage exceeding 150 percent of the Federal minimum wage (10 points).

(6) *Administrative points.* The State Director may assign up to 10 additional points to an application to account for such factors as statewide distribution of funds, natural or economic emergency conditions, or area economic development strategies. An explanation of the assigning of these points by the

State Director will be appended to the calculation of the project score maintained in the case file. If an application is considered in the National Office, the Administrator may also assign up to an additional 10 points. The Administrator may assign the additional points to an application to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters.

§ 4279.156 Planning and performing development.

(a) *Design policy.* The lender must ensure that all project facilities must be designed utilizing accepted architectural and engineering practices and must conform to applicable Federal, state, and local codes and requirements. The lender will also ensure that the project will be completed using the available funds and, once completed, will be used for its intended purpose and produce products in the quality and quantity proposed in the completed application approved by the Agency.

(b) *Project control.* The lender will monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction conforms with applicable Federal, state, and local code requirements; proceeds are used in accordance with the approved plans, specifications, and contract documents; and that funds are used for eligible project costs.

(c) *Equal opportunity.* For all construction contracts in excess of \$10,000, the contractor must comply with Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR, part 60). The borrower and lender are responsible for ensuring that the contractor complies with these requirements.

(d) *Americans with Disabilities Act (ADA).* B&I Guaranteed Loans which involve the construction of or addition to facilities that accommodate the public and commercial facilities, as defined by the ADA, must comply with the ADA. The lender and borrower are responsible for compliance.

§§ 4279.157–4279.160 [Reserved]

§ 4279.161 Filing preapplications and applications.

Borrowers and lenders are encouraged to file preapplications and obtain Agency comments before completing an application. However, if they prefer, they may file a complete application as the first contact with the Agency. Neither preapplications nor applications will be accepted or processed unless a lender has agreed to finance the proposal. Guaranteed loans of \$600,000 and less may be processed under paragraph (b) or (c) of this section, but guaranteed loans exceeding \$600,000 must be processed under paragraph (b) of this section.

(a) *Preapplications.* Lenders may file preapplications by submitting the following to the Agency:

(1) A letter signed by the borrower and lender containing the following:

(i) Borrower’s name, organization type, address, contact person, and federal tax identification and telephone numbers.

(ii) Amount of the loan request, percent of guarantee requested, and the proposed rates and terms.

(iii) Name of the proposed lender, address, telephone number, contact person, and lender’s Internal Revenue Service (IRS) identification number.

(iv) Brief description of the project, products, services provided, and availability of raw materials and supplies.

(v) Type and number of jobs created or saved.

(vi) Amount of borrower’s equity and a description of collateral, with estimated values, to be offered as security for the loan.

(vii) If a corporate borrower, the names and addresses of the borrower’s parent, affiliates, and subsidiary firms, if any, and a description of the relationship.

(2) A completed Form 4279–2, “Certification of Non-Relocation and Market Capacity Information Report,” if the proposed loan is in excess of \$1 million and will increase direct employment by more than 50 employees.

(3) For existing businesses, a current balance sheet and a profit and loss statement not more than 90 days old